

PTO/SB/21 (08-00)

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(to be used for all correspondence after initial filing)

Application Number

10/090,574

Filing Date

03/05/2002

First Named Inventor

Landau

Group Art Unit

1615

Examiner Name

H.N. Sheikh

Total Number of Pages in This Submission

Attorney Docket Number

**ENCLOSURES (check all that apply)**

- ☒ Fee Transmittal Form  
☒ Fee Attached  
☐ Amendment / Reply  
☐ After Final  
☐ Affidavits/declaration(s)  
☐ Extension of Time Request  
☐ Express Abandonment Request  
☐ Information Disclosure Statement  
☐ Certified Copy of Priority Document(s)  
☐ Response to Missing Parts/  
Incomplete Application  
☐ Response to Missing Parts  
under 37 CFR 1.52 or 1.53

- ☐ Assignment Papers  
(for an Application)  
☐ Drawing(s)  
☐ Licensing-related Papers  
☐ Petition  
☐ Petition to Convert to a  
Provisional Application  
☐ Power of Attorney, Revocation  
Change of Correspondence  
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- ☐ After Allowance Communication  
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☐ Appeal Communication to Board  
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Remarks

Appeal Brief

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**Firm  
or  
Individual name

LaMorte &amp; Associates

Signature

Date

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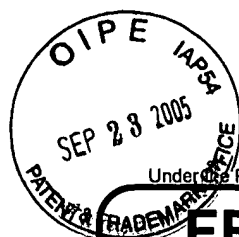
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PTO/SB/17 (10-04v2)

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# FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ ) 250

**Complete if Known**

Application Number	10/090,574
Filing Date	03/05/2002
First Named Inventor	Landau
Examiner Name	H.N. Sheikh
Art Unit	1615
Attorney Docket No.	Landau-9

**METHOD OF PAYMENT** (check all that apply)☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☐ Deposit Account:Deposit  
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50-1954

Lamorte &amp; Associates

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to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$ )

**2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE**

		Extra Claims		Fee from below	Fee Paid
Total Claims		-20** =			
Independent Claims		-3** =			
Multiple Dependent					

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ )

\*\*or number previously paid, if greater; For Reissues, see above

**FEE CALCULATION** (continued)**3. ADDITIONAL FEES**

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	250
1402	340	2402	170	Filing a brief in support of an appeal	
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) Pub fee and 5 copies

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ ) 250

**SUBMITTED BY**

(Complete if applicable)

Name (Print/Type)	Eric LaMorte	Registration No. (Attorney/Agent)	34653	Telephone	215 321-6772
Signature				Date	09/21/2005

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
**Landau**

Serial No.: **10/090,574**

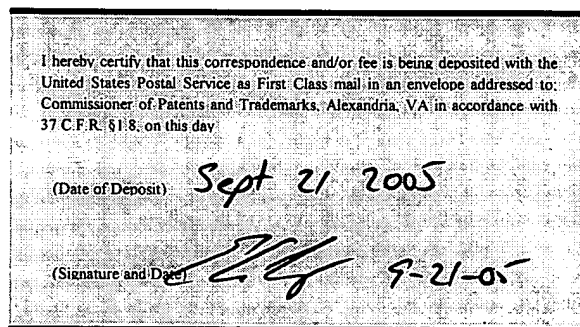
Filed: **March 05, 2002**

**For: SYSTEM AND METHOD OF  
ADMINISTERING PHARMACEUTICALS  
AND NUTRACEUTICALS AS PART OF A  
BEVERAGE CONTAINER**

Examiner: **H. N. Sheikh**

Group Art Unit: **1615**

Date: **September 21, 2005**



Mail Stop –Appeal Brief  
Commissioner of Patents and Trademarks

**APPEAL BRIEF OF APPELLANT**

Sir:

The Applicant has filed a Notice Of Appeal. The Applicant herein timely files this Brief in accordance with 37 C.F.R. 41 et seq.

**I. REAL PARTY IN INTEREST [37 CFR §41.37(c)(1)]**

The subject application is not assigned. As such, the Real Party in Interest is the Applicant.

**II. RELATED APPEALS AND INTERFERENCES [37 CFR §41.37(c)(2)]**

No other related application is currently subject to an Appeal or Interference.

### **III. STATUS OF CLAIMS [37 CFR §41.37(c)(3)]**

Claims 1- 17 are pending in this application.

Claims 1 - 17 stand as finally rejected by the Examiner.

### **IV. STATUS OF THE AMENDMENTS [37 CFR §41.37(c)(4)]**

The amendment filed by the Applicant on January 03, 2005 was entered by the Examiner. No other amendments were filed.

### **V. SUMMARY OF THE CLAIMED SUBJECT MATTER [37 CFR §41.37(c)(5)]**

The subject application has two pending independent claim, which are Claim 1 and Claim 12. All other claims depend from these three dependent claims.

Claim 1 sets forth a method of administering a biologically beneficial compound. (*See preamble of Claim 1*) The method requires the step of providing a beverage container (*10, Fig. 1*) having a cap assembly (*14, Fig. 1*) through which liquid (*22, Fig. 1*) in the beverage container (*10*) is drunk. The cap assembly (*14*) has at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly (*14*). (*See Summary, page 5, line 4-8*)

A mass of a biologically beneficial compound (*20*) is formed on an exterior surface of the cap assembly (*12*). (*See Specification, page 7, lines 19-22*) The mass of biologically beneficial compound (*20*) passes into the mouth of a person drinking from the beverage container through the cap assembly (*14*). (*See Specification, page 9, lines 6-8*)

Using the method of Claim 1, it will be understood that a cap assembly (*14*) is provided that has a biologically beneficial compound (*20*) disposed on its exterior. In this manner, when the cap assembly (*12*) is placed in the mouth, the biologically beneficial compound (*20*) is placed in the mouth. The biologically beneficial compound can then be consumed. (*See Specification,*

*page 9, lines 6-8*) However, prior to being placed within the mouth, the biologically beneficial compound (20) is isolated from the liquid that passes through the cap assembly (14). *(See specification, page 8, lines 10-14)*

Claim 12 sets forth a method similar to Claim 1, however the step of providing a bottle (12, *Fig. 1*) containing a consumable liquid (22) is positively claimed. *(See Claim 12, first claimed element)* provided. A cap assembly (14) for the bottle is also provided. The cap assembly (14) can be selectively opened and the consumable liquid (22) drunk from the bottle (12) through the cap assembly. A consumable material (20) is provided on an exterior surface of the cap assembly (14). *(See Specification, page 7, lines 19-20)* The consumable material (20) passes into the mouth when the liquid (22) is drunk directly from the cap assembly (14). *(See Specification, page 9, lines 6-8)*

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL [37 CFR §41.37(c)(6)]**

The grounds of rejection to be reviewed on appeal are as follows:

1. - **Claims 1-17 stand rejected under 35 USC 103(a) as being anticipated by U.S. Patent No. 5,456,351 to Johnson.**
- 2.- **Claims 1-17 stand rejected under 35 USC 103(a) as being anticipated by U.S. Patent No. 6,527,109 to Schoo.**

**VII. ARGUMENTS. [37 CFR §41.37(c)(7)]**

**GROUND 1 - Whether the Examiner erred in finally rejecting Claims 1-17 under 35 USC 103(a) as being disclosed by U.S. Patent No. 5,456,351 to Johnson.**

The rejected claims include two pending independent claims, which are Claim 1 and Claim 12. These claims are believed to be clearly distinguishable over the cited prior art references, as is explained below.

**Claim 1**

Claim 1 sets forth a method of administering a biologically beneficial compound. The method requires the step of providing a beverage container having a cap assembly through which liquid in the beverage container is drunk. The cap assembly has at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly.

A mass of a biologically beneficial compound is formed on an exterior surface of the cap assembly. The mass of biologically beneficial compound passes into the mouth of a person drinking from the beverage container through the cap assembly.

Using this method, it will be understood that a beverage container cap is provided that has a biologically beneficial compound disposed on the exterior of the cap. In this manner, when the cap is placed in the mouth, the biologically beneficial compound is placed in the mouth. The biologically beneficial compound can then be consumed. However, prior to being placed within

the mouth, the biologically beneficial compound is isolated from the liquid that passes through the cap.

**The Johnson patent** discloses a lid for a container that can be peeled off the container. The lid has two halves that define a pocket. Within the pocket can be kept a secondary edible product. To use the device, the lid is partially peeled open to remove the secondary edible product. The lid is then completely peeled away to expose the contents of the container. See Johnson, the method sequence represented by Fig. 2, Fig. 3 and Fig. 4 with accompanying description.

The Johnson patent does not disclose or suggest the step of providing a beverage container having a cap assembly through which liquid from the beverage container is drunk. Rather, in the Johnson patent, the lid must be removed. Nothing is consumed through the lid.

The Johnson patent does not disclose or suggest the step of providing a cap assembly having at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly. As has been stated, the Johnson lid must be removed from the container before anything can be drunk from the container.

The Johnson patent does not disclose or suggest the step of forming a mass of a biologically beneficial compound on an exterior surface the cap assembly. Rather, in the Johnson patent, a secondary object is merely held within a pocket inside the lid.

Lastly, the Johnson patent does not disclose or suggest the step of having the mass of biologically beneficial compound pass into the mouth of a person drinking with the cap assembly. Rather, The Johnson patent clearly shows that the secondary object is completely removed from the lid before it is used.

As a result, it can be seen that Johnson patent fails to show a single method step set forth by Claim 1. The Johnson patent therefore clearly does not disclose the matter of Claim 1 and the 35 USC 103 rejection should be withdrawn.

#### Claim 12.

Claim 12 sets forth a method similar to Claim 1. In the method of Claim 12, a bottle containing a consumable liquid is provided. A cap assembly for the bottle is also provided. The cap assembly can be selectively opened and the consumable liquid drunk from the bottle through the cap assembly.

A consumable material is provided on **an exterior surface** of the cap assembly. The consumable material passes into the mouth when the liquid is drunk directly from the cap assembly.

The Johnson patent does not disclose or suggest the step of providing a bottle having a cap assembly through which liquid is drunk. Rather, in the Johnson patent, the lid must be removed. Nothing is consumed through the lid.

The Johnson patent does not disclose or suggest the step of providing a cap assembly having at least one exterior surface that passes into a drinker's mouth when liquid is drunk through the cap assembly. As has been stated, the Johnson lid must be removed from the container before anything can be drunk from the container

The Johnson patent does not disclose or suggest the step of providing consumable material on an exterior surface the cap assembly. Rather, in the Johnson patent a secondary



object is merely held within a pocket inside the lid.

Lastly, ~~the Johnson patent does not disclose or suggest the step~~ of having the consumable material pass into the mouth of a person drinking from the beverage container through the cap assembly.

As a result, it can be seen that Johnson patent fails to disclose the method steps set forth by Claim 12. The Johnson patent therefore clearly does not anticipate the matter of Claim 12 and the 35 USC 103 rejection should be withdrawn.

**GROUND 2 - Whether the Examiner erred in finally rejecting Claims 1-17 under 35 USC 103(a) as being disclosed by U.S. Patent No. 6,527,109 to Schoo.**

The rejected claims include two pending independent claims, which are Claim 1 and Claim 12. These claims are believed to be clearly distinguishable over the cited prior art references, as is explained below.

The Schoo patent discloses a cap for a beverage bottle that has a liquid-dissolvable disk that is held within the structure of the cap. The disk dissolves in the beverage when the beverage bottle is shaken. See Abstract of Schoo patent.

Claim 1

As applied to the wording of pending Claim 1, the Schoo patent does not disclose or suggest the method step of forming a mass of a biologically beneficial compound on an exterior

surface the cap assembly. Rather, in the Schoo patent, a dissolvable disk is disposed on the interior of the cap and dissolves with the beverage when the beverage is shaken. This is directly opposite to the present invention that attempts to isolate the biologically beneficial material from the beverage until it is consumed.

Furthermore, the Schoo patent does not disclose or suggest the method step of having the mass of biologically beneficial compound pass into the mouth of a person drinking with the cap assembly. Rather, the Schoo patent clearly shows that the dissolvable disk is inside the cap and does not have any direct contact with the drinker's mouth.

As a result, it can be seen that Schoo patent fails to show or suggest the method steps set forth by Claim 1. The Schoo patent therefore clearly does not disclose the matter of Claim 1 and the 35 USC 103 rejection should be withdrawn.

#### Claim 12

As applied to the wording of pending Claim 12, the Schoo patent does not disclose or suggest the method step of providing consumable material on an exterior surface the a cap assembly. Rather, in the Schoo patent, a dissolvable disk is disposed on the interior of the cap and dissolves with the beverage when the beverage is shaken.

Furthermore, the Schoo patent does not disclose or suggest the method step of having the consumable material pass into the mouth of a person drinking from the beverage container through the cap assembly. Rather, the Schoo patent clearly shows that the dissolvable disk is inside the cap and does not have any direct contact with the drinker's mouth.


As a result, it can be seen that Schoo patent fails to show or suggest the method steps set

forth by Claim 12. The Schoo patent therefore clearly does not anticipate the matter of Claim 12 and the 35 USC 102 rejection should be withdrawn.

**CONCLUSION**

The Applicant's brief is believed to be in full compliance with 37 C.F.R. §41.37 et seq. The Examiner's 35 U.S.C. §103 rejections are not supported by the cited references. The Board is therefore requested to cause the Examiner to remove the rejections and allow the remaining pending claims.

Respectfully Submitted,



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Attorney for Applicant

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Yardley, PA 19067

**VIII. CLAIMS APPENDIX [37 CFR 41.47(c)(8).**

The pending claims stand as follows:

12. A method, comprising the steps of:

providing a bottle containing a consumable liquid;

providing a cap assembly for said bottle, wherein said cap assembly has at least one exterior surface, and wherein said cap assembly can be selectively opened and said consumable liquid drunk from said bottle through said cap assembly;

providing a consumable material on said at least one exterior surface of said cap assembly, wherein said consumable material passes into the mouth when said consumable liquid is drunk directly from said cap assembly.

13. The method according to Claim 12, wherein said step of providing a consumable material includes compressing powdered material into a solid form on said at least one exterior surface of said cap assembly.

14. The method according to Claim 12, wherein said step of forming a mass includes molding molten material around said at least one exterior surface of said cap assembly and allowing said molten material to solidify.

15. The method according to Claim 12, wherein said step of forming a mass includes forming an annular structure, and said method includes attaching said annular structure to said at least one exterior surface of said cap assembly.

16. The method according to Claim 12, wherein said consumable material is selected from a group consisting of pharmaceutical compounds and nutraceutical compounds.

17. The method according to Claim 12, wherein said consumable material is not completely soluble in said consumable liquid.